

Appl. No.: 10/678,556
Amdt. dated 02/09/2006
Reply to Office action of August 9, 2005

REMARKS/ARGUMENTS

In the August 9th Office Communication, the Examiner objected to the Abstract as originally filed. The Applicant has rewritten the Abstract and respectfully submits that the new Abstract included in the present response obviates the bases of the Examiner's objection. Therefore, the Applicant requests that the Examiner withdraw the present rejection.

Also in the August 9th Office Communication, the Examiner rejected claims 1 -37 as anticipated under 35 U.S.C. § 102(b) by each of: White *et al.* (U.S. Patent No. 5,339,252); Dunham *et al.* (U.S. Patent No. 3,696,456); and Marshall (U.S. Patent No. 6,042,759). However, in no instance has the Examiner made a sufficiently detailed showing to establish a *prima facie* showing of anticipation. For this reason alone, the Applicant respectfully requests that the Examiner withdraw the present rejection.

Additionally, the Applicant notes that his invention differs substantially from the disclosure of each of the cited references.

The method disclosed by Dunham does not use a three dimensional scan of the user's foot. Nor does the method disclosed by Dunham compare any data obtained from a scan of a potential user's foot to any "model" foot data. Furthermore, nothing in Dunham teaches or suggests using data derived from a scan of a user's foot and "model" data to prepare a physical last.

The Dunham method takes contour measurements and develops a last solely from such contour measurements. In marked contrast, the Applicant's invention begins with "model" foot data and adjusts such data to conform to the three dimensional configuration of the user's foot.

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Furthermore, Dunham does not address the types of lasts. The Applicant's claimed process can adjust heel height and pitch of the last and account for toe shapes. Moreover, the claimed subject matter is directed to a method of making a new custom last in accordance with any given style. For example, in one embodiment of the present invention, a foot of a female client is scanned and the data derived from that scan is combined with "model" data for a shoe she desires, including the toe shape, heel height and material that will be used to construct her shoes. The Applicants combine all of this data to prepare a last to make the shoe of the dreams for this client.

Turning to the disclosure of Marshall, the Applicants note that this reference is not pertinent. Rather, the disclosure of Marshall is directed to the manufacturer of orthotics and not for lasts or custom forms. The data that is collected from the mold of the specific client in the Marshall patent is compared to groups of already existing data that is in similar families. The data is then used to make a best choice orthotic. In contrast, the claimed subject matter is directed to the production of a last.

The third reference, White, measures only the length and width of the user's foot. The method of White does not consider either the circumference or any three dimensional aspect of the user's foot. In contrast, the claimed subject matter does.

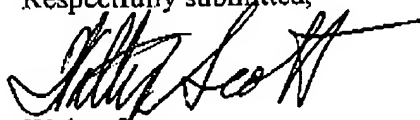
Furthermore, the claimed method can adjust the prototype of the last for heel height and heel pitch, along with length, width, circumference, all at various points on the foot. None of the cited references teaches or suggest any such adjustment.

The Applicant respectfully petitions for a three month extension of time to respond to the August 9, 2005 Office Communication. It is not believed that fees for net addition of claims are

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required, beyond those for which the Applicant has already paid. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. (571) 273-8300 at the date shown below.



Walter Scott

February 9, 2006
Date